

REMARKS

The Substitute Specification which was submitted along with the above-referenced application on March 9, 2004 has been amended above to remove a minor inconsistency, to address the Examiner's comments contained in the Final Office Action, and to place the claims in a better form for an appeal pursuant to 37 C.F.R. § 1.116. Indeed, Applicant respectfully asserts that the amendment to the Substitute Specification has not been made for any reasons related to patentability of the claims, but merely to expedite the prosecution thereof. Claims 26 and 27 are under consideration in the above-referenced application. It is respectfully submitted that no new matter has been added.

In the Final Office Action, the Examiner alleges that "one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120", i.e., from the filing date of the Parent Application (which was filed on May 25, 2001), and for this reason refuses to remove U.S. Patent Nos. D428,298; D429,942; and D437,885 from being applied as prior art references to the claims of the present application. Applicant provides herewith an Appeal Brief addressing the impropriety of the refusal to confirm the claim of priority to the present application to the U.S. Patent Application Serial No. 09/865,349, filed on May 25, 2001.

In addition, claims 26 and 27 stand finally rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over "any of Cohen Patents of record"¹ (and thus shall be

¹ As provided in the enclosed Appeal Brief, only one of the "Cohen patents" can be arguably relied on to reject Independent claims 26 and 27 under 35 U.S.C. § 103(a). This is because the "Cohen patents" and the above-referenced application have the same inventor listed thereon, and the present application claims priority from U.S. Patent Application Serial No. 09/865,349, filed on May 25, 2001. Accordingly, only 35 U.S.C. §102(b) reference of the "Cohen patents" that lists the same inventor as the present application can be relied on for rejecting independent claims 26 and 27 under 35 U.S.C. § 103(a). The only such reference of the "Cohen patents" that may be relied by the Examiner, if at all, is U.S. Patent No. 6,056,464 to Cohen (the "Cohen Patent").

referred to herein below as the "Cohen Patent"), in view of U.S. Patent No. 4,560,344 issued to Kietaibl (the "Kietaibl Patent") or U.S. Patent No. 5,169,305 issued to Kee (the "Kee Patent"). Applicant provides herewith the Appeal Brief addressing the impropriety of this rejection as well.

For at least the reasons as set forth in the enclosed Appeal Brief, Applicant respectfully asserts that the 35 U.S.C. § 103(a) rejections of claims 26 and 27 should be withdrawn.

In light of the foregoing, Applicant respectfully submits that pending claims 26 and 27 are in condition for allowance. Prompt consideration, reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

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